THE LAW OF DRAMATIC COPYRIGHT. II.

V. DRAMATIZATION OF NOVELS. — *Continued.* — Fortunately, we, in the United States, have had very little trouble in regard to the dramatization of novels. The copyright statute provides[1] that the author of a copyrighted book may reserve the right to dramatize and translate his own work. There is no question, however, that but for this act which creates the additional right of dramatization and translation, the English rule would be in force in this country.

The exclusive right of translating "Uncle Tom's Cabin" was denied Mrs. Stowe in *Stowe* v. *Thomas*,[2] decided before the enactment of the statute permitting authors to reserve the sole right to dramatize and translate their works. In this case, it was held that a translation of "Uncle Tom's Cabin" into German was not an infringement of Mrs. Stowe's copyright. Mr. Justice Grier, of the Supreme Court, who heard the case while sitting at circuit, said:—

"The distinction taken by some writers on the subject of literary property, between the works which are *publici juris*, and of those which are subject to copyright, has no foundation, in fact, if the established doctrine of the cases be true, and the author's property in a published book consists only in a right of copy. By the publication of Mrs. Stowe's book, the creations of the genius and imagination of the author have become as much public property as those of Homer or Cervantes. Uncle Tom and Topsy are as much *publici juris* as Don Quixote and Sancho Panza. All her conceptions and inventions may be used and abused by imitators, play-rights and poetasters. They are no longer her own. Those who have purchased her book may clothe them in English doggerel, in German or Chinese prose. Her absolute dominion and property in the creations of her genius and imagination have been voluntarily relinquished. All that now remains is the copyright of her book; the exclusive right to print, reprint and vend it, and those only can be called infringers of her rights, or pirates of her property, who are guilty of printing, publishing, importing or vending without her license 'copies of her book.' A translation may, in loose phraseology, be called a transcript or copy of her thoughts or conceptions, but in no correct sense can it be called a copy of her book."

VI. RIGHTS IN MANUSCRIPT PLAYS.—Dramatic authors are protected in their unpublished productions, upon the same theory and to the same extent that the author of a book, or any purely literary work, is protected. Until publication, the author's common

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[1] Act, July 8, 1870, 16 Stat. at Large, 212; R. S. U. S. Sec. 4952; Act, March 8, 1891, 26 Stat. at Large, 1106; The "Trilby" case—Harper *v.* Ranous, 67 Fed. 904.

[2] (1853) 2 Wall. Jr. 547. F. C. 13,514.

law property in his manuscript is recognized, and its violation punished. The duration of this right is indefinite—it lasts until the work is voluntarily published, and after publication. Unless there is statutory protection there is none. It becomes material, therefore, to consider the question of publication. Publication results from any act of the proprietor by which the book comes within reach of the public.[1] In the case of a book, exposing copies for sale, even though none actually be sold, depositing two copies in a public office,[2] loaning copies to subscribers,[3] etc., have been held to constitute publication and divest the common law right.

The question whether the performance of a manuscript play amounts to a publication, came before the courts at an early date. In *Macklin* v. *Richardson*,[4] the author of a farce entitled "Love a la Mode," had been in the habit of lending his manuscript to theatrical people for the purpose of presentation upon the stage. At the close of each performance he had always insisted on the return of the manuscript, and the farce had never been printed. The defendant hired a shorthand writer to attend the theater and take down the dialogue as it was recited. He then printed one act in the "Court Miscellany" and announced that the following acts would appear in subsequent issues of the magazine. Lord Commissioner Smythe said:—

"It has been argued to be a publication by being acted, and therefore the printing is no injury to the plaintiff, but that is a mistake, for beside the advantage from performance, the author has another means of profit from the printing and publishing, and there is as much reason that he should be protected in that right as any other author."

Lord Commissioner Bathurst asserted:—

"The printing it before the author has, is doing him a great injury. Strong case."

This case therefore held that the presentation was not publication, and that printing by others was a violation of the author's exclusive right to first publish his own work.[5] In *Coleman* v. *Wathen*,[6] the question presented, was whether the unauthorized acting of a published play was an infringement of copyright under the statute of

[1] Jewelers Mercantile Agcy. *v.* Jewelers Wkly. Pub. Co., 155 N. Y. 241, 49 N. E. 872, 875.

[2] Callaghan *v.* Myers, 128 U. S. 617, 657.

[3] Ladd *v.* Oxnard, 75 Fed. 703; Jewelers Mercantile Agcy. *v.* Jewelers Wkly. Pub, Co., 155 N. Y. 241, 49 N. E. 872.

[4] (1770.) Ambler, 674.

[5] Palmer *v.* De Witt, 47 N. Y. 532.

[6] (1792.) 5 Durn. & East, 245.

Anne, which provided a penalty against any one who published pirated copies; it therefore became material to determine whether acting on the stage was such a publication. The play in question was O'Keefe's "Agreeable Surprise." It was argued that the presentation on the stage was sufficient evidence for the jury to conclude that the work had been pirated, for it could not be supposed that the performances could by any other means have exhibited so perfect a representation of the work. Lord Kenyon said.—

"There is no evidence to support the action in this case. The statute for the protection of copyrights only extends to prohibit the publication of the book itself by any other than the author or his lawful assignees. * * * But here was no publication."

Mr. Justice Buller concurred, saying:—

"Reporting anything from memory can never be a publication within the statute. Some instances of strength of memory are very surprising; but the mere act of repeating such a performance cannot be left as evidence to the jury that the defendant had pirated the work itself."[1]

These early cases are probably responsible for two theories in the law of dramatic copyright which have been announced in this country, and which are seemingly at variance with the volume of authority on other branches of the law. First, that the presentation of a play upon the stage is not such a publication as to destroy the common law right; second, a doctrine which at one time had considerable support, that as much of the play as a member of the audience was able to carry away in his memory, unaided by shorthand, might be used by him as he saw fit, even to the extent of reproducing and representing the entire play upon the stage. Judge Cadwalader first announced this view in *Keene* v. *Wheatley*,[2] a case involving the piracy of "Our American Cousin." It was purely *obiter*, but was followed in several cases.[3] These cases held public performances to be a qualified publication, and that an attendant might use at will all he could remember. The use of stenography was always forbidden, on the ground that it involved a breach of

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[1] See also, Morris *v.* Kelly (1820), 1 Jac. & W. 461; Murray *v.* Elliston (1822), 5 Barn & Ald. 657. Judge Cadwalader, in Keene *v.* Wheatley, 9 Am. Law. Rev. 33, gives some interesting facts, the result of his own researches, concerning Coleman *v.* Wathen, which are not to be found in the report of that case.

[2] 9 Am. Law Reg. 33, 14 Fed. Cas., p. 180, 202, No. 7644.

[3] Keene *v.* Clarke, 5 Robertson (28 N. Y. Superior Ct.) 38, where the suggestion was made that the supposed right to memorize and carry away, might be restricted by printing notices of admission, or posting them in the theater. Keene *v.* Kimball, 16 Gray (82 Mass.) 545; Crowe *v.* Aiken, 2 Biss. 208, Fed. Cas. 3441; Boucicault *v.* Wood, 2 Biss. 34, Fed. Cas. 1693.

confidence. This doctrine was short-lived. In 1882 the suprem court of Massachusetts, in *Tompkins* v. *Halleck*,[1] overruled its earlier decision in *Keene* v. *Kimball*, Mr. Justice Devens saying:—

"The decision in *Keene* v. *Kimball* must be sustained, if at all, upon the ground that there is a distinction between the use of a copy of a manuscript play obtained by means of the memory or combined memories of those who may attend the play as spectators, it having been publicly represented for money, and of one obtained by notes, stenography, or similar means, by persons attending the representation; that in the former case the unauthorized representation of the play would be legal, while in the latter it would not be.

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"The spectator of a play is entitled to all the enjoyment he can derive from its exhibition. He may make it afterwards the subject of conversation, of agreeable recollection, or of just criticism, but we cannot perceive that in payment for his ticket of admission he has paid for any right to reproduce it. The mode in which the literary property of another is taken possession of, cannot be important. The rights of the author cannot be made to depend merely on his capacity to enforce them, or those of the spectator on his ability to assert them. One may abandon his property, or may dedicate it to the use of the public; but while it remains his, the fact that another is able to get possession of it in no way affects his rights.

"If the performance of a manuscript play is not a complete dedication to the public, (and from the time of the decision in *Macklin* v. *Richardson*, *Ambl. 694*, there is no case known to us which has so held,) subsequent performances by others, whether they obtain their copies by memory or by stenography, are alike injurious. Cases are not unknown of memories so tenacious that their possessors could, by attending one or two representations, retain the text of an entire play; and the dramatic profession is one in which the faculty of memory is highly cultivated. There is no reason why the exercise of this faculty should be in any way restrained; it is not that the spectator learns the whole play which entitles the author to object; it is the use that is sought to be made of that which is learned that affords just grounds of complaint.

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"The special use of his play made by the author, for his own advantage, by a representation thereof for money, is not an abandonment of his property nor a complete dedication of it to the public, but is entirely consistent with an exclusive right to control such representation. *Roberts* v. *Myers*, 23 Law Rep. 396. If the spectator desires, there is no reason why he should not be permitted to take notes for any fair purpose; as, if he is a dramatic critic, for fair comment on the production, which is offered to the favorable consideration of the public; or, if a student of dramatic literature, for comparison with other works of its class. We should not be willing to admit that police arrangements could be allowed to interfere with this, any more than with the taking of notes by one who attends a course of scientific lectures. The taking of notes in order to obtain a copy for representation is a different matter; it is the use intended to be made that renders it proper to restrain such an act. The ticket of ad-

[1] 133 Mass. 32.

mission is a license to witness the play, but it cannot be treated as a license to the spectator to represent the drama, if he can by memory recollect it, while it is not a license so to do if the copy is obtained by notes or stenography. In whatever mode the copy is obtained, it is the use of it for representation which operates to deprive the author of his rights.

"For the reasons stated, we are brought to the result that the decision in *Keene* v. *Kimball* cannot be sustained. The presiding judge having, at the hearing of this case, ruled in accordance with it, his decree must be reversed."[1]

That the performance of an uncopyrighted manuscript or play upon the stage is not a dedication of it to the public, is clear. Judge Shipman said, in *Boucicault* v. *Fox*:[2]

"There can be no evidence of abandonment to the public of any rights growing out of the authorship of a manuscript, drawn from the mere fact that the manuscript has, by the consent and procurement of the author, been read in public by him, or another, or recited, or represented, by the elaborate performances and showy decorations of the stage. If the reading, recitation or performance is conducted by his direction, by his agents, for his benefit and profit, with the sanction of the law, how can it be said to be evidence of his intention to abandon his production to the public? Suppose Mrs. Kemble were to read, in her unrivalled manner, a drama of her own production? Would the reading be a dedication to the public, and authorize any elocutionist to read it, who could obtain a copy, against the consent of the author? How would it change the matter, if she should, instead of reading the play, have it brought out by a company at Wallack's, or the Winter Garden, with all the embellishments which the stage can lend? The true doctrine is, that the literary property in the manuscript continues in the author, so long as he exercises control over it, or has the right to control it; and, until its publication, no one has a right to its use, or that of its contents, without his consent. Therefore, any special use of it by him, in public, for his own benefit, is a use perfectly consistent with his exclusive right to its control, and is no evidence of abandonment."

The great weight of authority is in favor of this rule.[3] Even the few cases which held that if a spectator could by memory alone reproduce a play it was his to use as he chose, conceded that the presentation on the stage did not of itself divest the author's right, but simply that his property in his manuscript was, by the public representation, subject to the rights of the spectator to use what he

[1] See also French *v.* Connelly, 1 N. Y. Wkly. Dig. 197.

[2] 5 Blatch. 87, Fed. Cas. 1, 691.

[3] Boucicault *v.* Hart, 13 Blatch. 47, Fed. Cas. 1, 692; Palmer *v*, De Witt, 47 N. Y. 532; Roberts *v.* Myers, Fed. Cas. 11, 906; Boucicault *v.* Wood, 2 Biss. 34, Fed. Cas. 1, 693; Tompkins *v.* Halleck, 133 Mass. 34; Aronson *v.* Fleckenstein, 28 Fed, 75, 78; Aronson *v.* Baker, 43 N. J. Eq. 365, 12 At., 177, 179; Jones *v.* Thorne, 1 N. Y. Leg. Obs. 408; French *v.* Connelly, 1 N. Y. Wkly. Dig. 197; French *v.* Maguire, 55 How. Pr. 471, 479; Thomas *v.* Lennon, 14 Fed. 849, 851; Carte *v.* Ford, 15 Fed. 439, 443.

could remember, not that it was an absolute abandonment, but a limited dedication.[1]

The reason why public performance of an unpublished uncopyrighted play is not a dedication, may be very briefly stated: The author does not part with his manuscript, and no copies are made so that the public can have access to the work itself.

The presentation on the stage is no more in fact than a reading to a limited number of people from an original manuscript, which at all times remains in the possession, or under the control, of the author or his assignee.

In England, the theory of copyright differs from ours. Here it is held that the formalities required by the Acts of Congress are conditions precedent to the existence of the right, and that publication without compliance with the provisions directing filing of title and deposit of copies is an abandonment of the work to the public. In England, however, copyright attaches by act of publication. The registration of the title at Stationers' Hall is simply a condition precedent to an action for the enforcement of the right which has already attached by publication, and may be done at any time before suit is instituted. Under the statute 3 Will. IV., c. 15 (1833), it was provided that the author of any unpublished dramatic piece shall have the sole liberty of representing the same for twenty-eight years. The Act 5 & 6 Vict., c. 45, sec. 20 (1842), extended the term to forty-two years, or the natural life of the author and seven years additional, whichever shall be the longer time; re-enacted by 3 Will. IV., it extended its terms to musica compositions, and provided that the first public performance of any dramatic or musical composition shall be deemed equivalent in the construction of the act to the first publication of a book. Hence, public performance of a dramatic composition in England is, by statute, a publication, but not an abandonment. After the first public performance, by the terms of the act, the statutory right attaches. There is no such provision in the acts of Congress, and since the American courts have held that public performance is not a publication, as long as a play is kept in manuscript, there is, in this country, a perpetual right of representation. In England, the statute has limited the duration of the right for a term of years.

The English acts are construed in *Clark* v. *Bishop*.[2]

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[1] Crowe *v.* Aiken, 2 Biss. 208, Fed. Cas. 3, 441, 439, 443; Keene *v.* Kimball, 16 Gray, 545, 550

[2] 25 L. T. (N. S.) 908.

VII. INFRINGEMENT.—There is infringement of dramatic copyright whenever a material part of one play is incorporated in another. In *Daly* v. *Palmer*[1] Judge Blatchford said:—

"In the case of the dramatic composition, designed or suited for representation, the series of events directed in writing by the author, in any particular scene, is his invention, and a piracy is committed if that in which the whole merit of the scene consists, is incorporated in another work, without any material alteration in the constituent parts of the series of events, or in the sequence of the events in the series. The adaptation of such series of events to different characters who use different language from the characters and language in the first play, is like the adaptation of the musical air to a different instrument, or the addition to it of variations or of an accompaniment. The original subject of invention, that which required genius to construct it and set it in order, remains the same in the adaptation. A mere mechanic in dramatic composition can make such adaptation, and it is a piracy if the appropriated series of events, when represented on the stage, although performed by new and different characters, using different language, is recognized by the spectator, through any of the senses to which the representation is addressed, as conveying substantially the same impressions to, and exciting the same emotions in, the mind, in the same sequence or order."

In this case, Augustin Daly had written a melodrama entitled "Under the Gaslight." Dion Boucicault was the author of a play called "After Dark." In Daly's play there was a novel dramatic incident called the "railroad scene," and Boucicault in "After Dark" made use of a similar incident. Judge Blatchford described them as follows:—

"In the plaintiff's play, there is a surface railroad, with a railroad station, and a signal station, shed, or store-room. A signal man appears, and a woman named Laura. At the request of Laura, the signal man locks her in the shed. There are some axes in it. One Snorkey then appears. The signal man then goes off. One Byke then enters, with a coil of rope in his hand, and throws it over Snorkey, and tightens it around his arms, and coils it around his legs, and then lays him across the track and fastens him to the rails, and goes off, having, by language, given it to be understood that the intention is that Snorkey shall be run over by the train and killed. Laura, from a window in the shed, sees what is done. The steam whistle of the train is heard. She takes an axe and strikes the door. The whistle is heard again, with the rumble of the approaching train. She gives more blows on the door with the axe; it opens: she runs and unfastens Snorkey, the lights of the engine appear, and she moves Snorkey's head from the track as the train rushes past. This incident occupies the whole of the third scene of the fourth act. There is a good deal of conversation, first, between the signal man and Laura, and then between Snorkey and the signal man, and then between Byke and Snorkey, and then between Laura and Snorkey. There are stage directions for Laura to go into the shed, for the signal man to lock her

[1] 6 Blatch. 256, F. C. 3552.

in, for Snorkey to enter, for the signal man to go off, for Byke to enter with the coil of rope, for Byke to throw the coil over Snorkey, and tighten the rope around Snorkey's arms and coil it around his legs, for Byke to lay Snorkey across the track and fasten him to the rails, for Byke to go off, for the steam whistle to be heard, for blows at the door to be heard, for the steam whistle to be heard again, with the rumble of the train, for more blows on the door to be heard, for the door to open, for Laura to appear with the axe in her hand, for her to run and unfasten Snorkey, for the lights of the engine to be seen, for Laura to take Snorkey's head from the track, and for the train to rush past. These stage directions are separate and apart from the conversation, and are in italics and in parentheses, at the appropriate places in the progress of the scene. The substance and purport of the successive conversations in the scene are, that Laura requests the signal man to lock her in the shed, and he consents; that Snorkey requests the signal man to stop by signal the expected train, and he refuses; that Byke gives Snorkey to understand that he is to be run over and killed by the train, and that Snorkey requests Laura to break down the door and release him. The idea is also conveyed, by the language in the scene, that Byke is about to commit robbery and murder at Laura's house, and that Snorkey is trying to give information of the fact.

"In the play of 'After Dark,' the 'railroad scene' is in the third act. In the first scene of that act one Gordon Chumley is rendered insensible by drugs, and one Old Tom is thrown by force into a wine vault. In the second scene of that act, Old Tom is represented as in the vault. There is an orifice in the vault, which opens upon the track of an underground railroad. The rumbling of cars is heard, and lights flash through the orifice. Old Tom, through a door into an adjoining vault, sees two of the characters carry Chumley, and break a hole through a wall and pass the body of Chumley through the hole, for concealment, as he supposes, in a well or vault. Old Tom then finds an iron bar, and resolves to attempt escape by enlarging the orifice in the wall opening on the railroad. Then follows scene third. The railroad is seen, with a circular orifice which ventilates the cellar in which Old Tom is. The body of Chumley is seen lying across the rails, and the arm of Old Tom, and then his head, are passed through the orifice. For this much of the scene there are only stage directions, without spoken words. The following is a *verbatim* copy of the rest of the scene, the parts in parentheses being stage directions: 'Old Tom—About four courses of brick will leave one room to pass. What is that on the line? There is something, surely, there. (A distant telegraph alarm rings. The semaphore levers play, and the lamps revolve.) Great Heavens! 'tis Gordon. I see his pale upturned face—he lives! Gordon! Gordon! I'm here, He does not answer me. (A whistle is heard, and a distant train passes.) Ah! murderers. I see their plan. They have dragged his insensible body to that place, and left him there to be killed by a passing train. Demons! Wretches! (He works madly at the orifice. The bricks fall under his blows. The orifice increases. He tries to struggle through it) Not yet. Not yet. (The alarm rings again. The levers in the front play. The red light burns, and a white light is turned to L. H. tunnel. The wheels of an approaching train are heard.) Oh, heaven! give me strength—down—down. One moment! (A large piece of wall falls in, and Old Tom comes with it.) See, it comes, the monster comes. (A loud rum-

bling and crashing sound is heard. He tries to move Gordon, but, seeing the locomotive close on him, he flings himself on the body, and clasping it in his arms, rolls over with it forward. A locomotive, followed by a train of carriages, rushes over the place, and, as it disappears, Old Tom frees himself from Chumley and gazes after the train.)'

Judge Blatchford from these facts concludes:—

"The 'railroad scene' in the plaintiff's play is undoubtedly a dramatic composition. Those parts of it represented by motion or gesture, without language, are quite as much a dramatic composition as those parts of it which are represented by voice. This is true, also, of the 'railroad scene' in 'After Dark.' Indeed, on an analysis of the two scenes in the two plays, it is manifest that the most interesting and attractive dramatic effect in each is produced by what is done by movement and gesture, entirely irrespective of anything that is spoken. The important dramatic effect, in both plays, is produced by the movements and gestures, which are prescribed and set in order, so as to be read, and which are contained within parentheses. The spoken words in each are of but trifling consequence to the progress of the series of events represented and communicated to the intelligence of the spectator, by those parts of the scene which are directed to be represented by movement and gesture, The series of events so represented, and communicated by movement and gesture alone to the intelligence of the spectator, according to the directions contained in parentheses, in the two plays in question here, embraces the confinement of A. in a receptacle from which there seems to be no feasible means of egress; a railroad track, with the body of B. placed across it, in such manner as to involve the apparently certain destruction of his life by a passing train; the appearance of A. at an opening in the receptacle, from which A. can see the body of B., audible indications that the train is approaching; successful efforts by A., from within the receptacle, by means of an implement found within it, to obtain egress from it upon the track; and the moving of the body of B., by A., from the impending danger, a moment before the train rushes by. In both of the plays the idea is conveyed that B. is placed intentionally on the track, with the purpose of having him killed. Such idea is, in the plaintiff's play, conveyed by the joint medium of language uttered and of movements which are the result of prescribed directions, while, in Boucicault's play, it is conveyed solely by language uttered. The action, the narrative, the dramatic effect and impression, and the series of events in the two scenes, are identical. Both are dramatic compositions, designed, or suited, for public representation. It is true that, in one, A. is a woman, and, in the other, A. is a man; that, in one, A. is confined in a surface railroad station shed, and, in the other, A. is confined in a cellar abutting on the tracks; that, in one, A. uses an axe, and, in the other, A. uses an iron bar; that, in one, A. breaks down a door, and, in the other, A. enlarges a circular hole; that, in one, B. is conscious, and is fastened to the rails by a rope, and, in the other, B. is insensible, and is not fastened; and that, in one, there is a good deal of dialogue during the scene, and, in the other, only a soliloquy by A., and no dialogue. But the two scenes are identical in substance, as written dramatic compositions, in the particulars in which the plaintiff alleges that what he has invented, and set in order, in the scene, has been appropriated by Boucicault."

In the scene in question, the originality consisted in the rescue by a third person. The idea of fastening a person to a railroad track, with the anticipation of having him run over and killed by an expected train, was shown to be old. The same incident was used in a story, which had been published in the *Galaxy*, called "Captain Tom's Fright." In the story Captain Tom was an engineer in charge of a construction gang. His gang mutinied one night, overpowered and disarmed him, and while unconscious he was tied to a railroad track. He regains his senses and slowly realizes his perilous position. He is bound to the rails of the main track, and he wonders if the eleven o'clock train has passed, when he sees the headlight of its engine approaching across the prairie; he hears the roar and jar of the oncoming train, it comes nearer and nearer, the lights glare in his eyes and the wheels seem within a foot of his head. He faints from terror, but the train rushes by over a temporary side track a few feet from where Captain Tom lies, adly frightened but unhurt.

Daly's original dramatic conception, therefore, consisted simply in the combination of incidents. An individual is put in peril of his life by being placed by another upon a track over which a railroad train is momentarily expected to arrive, and so fastened that he cannot move from his dangerous position. From this position he is rescued by a third person, who, surmounting obstacles, succeeds *at the last moment* in releasing him.[1]

After the enjoining of the railroad scene by Judge Blatchford, various ingenious expedients were resorted to by the proprietors of "After Dark" to present their play without violating the injunction. At one time the imperilled person was suspended over the track a few feet from the ground, instead of being bound to the rails, and was rescued as before. This was held to be an infringement,[2] because it told the same story in the same way. Later the scene was modified so that the person hoped to be got rid of was stupefied by some drug so as to be unable to act intelligently, and in that condition was placed upon the track, a duplication of Boucicault's original device, but he was saved from death without the aid of a third person, in one version by staggering from the track in time, and in another by striking a switch lever unconsciously and thus side-tracking the train. This grouping of incidents, eliminating the rescuer, whose struggles in overcoming obstacles was a

[1] Daly *v.* Webster, 56 Fed. 483, 487.

[2] Daly *v.* Webster, 56 Fed. 483, 484.

material part of the dramatic device, was held to tell a materially different tale, and not to infringe,[1] particularly in view of the fact that the main incidents were not new, and that "Captain Tom's Fright" supplied material for all but the rescue.

A resemblance between two plays simply in dramatic commonplaces, such as having the action take place in Washington and dealing with political life, is not enough to warrant a finding of infringement. Infringement is not dependent upon the quantity taken. It is the value, irrespective of amount,[3] and if what is taken is a material and valuable part of the complainant's play, it makes no difference that it may be but a small portion of the mere volume of the work. However, as Lord O'Hagan said in *Chatterton* v. *Cave*,[4] it must be a part and not a particle.

VIII. RIGHTS AND REMEDIES UNDER THE UNITED STATES STATUTES. Section 4952 provides:[5]

"The author, inventor, designer or proprietor of any book, map, chart, dramatic or musical composition, engraving, cut, print, or photograph or negative thereof, or of a painting, drawing, chromo, statue, statuary, and of models or designs intended to be perfected as works of the fine arts, and the executors, administrators, or assigns of any such person shall, upon complying with the provisions of this chapter, have the sole liberty of printing, reprinting, publishing, completing, copying, executing, finishing and vending the same; and, in the case of dramatic composition, of publicly performing or representing it or causing it to be performed or represented by others; and authors or their assigns shall have the exclusive right to dramatize and translate any of their works for which copyright shall have been obtained, under the laws of the United States."

The term of copyright is twenty-eight years from the time of recording the title.[6] The author, if he still be living, or his widow or children, if he be dead, may have a renewal for a term of fourteen years upon recording the title of the work, or description of the article, a second time, and complying with all other regulations in regard to original copyrights within six months before the ex-

[1] Daly *v.* Webster, 56 Fed. 483, 487. See, also, Daly *v.* Brady, 39 Fed. 265; 69 Fed. 285; 175 U. S. 148.

[2] Maxwell *v.* Goodwin, 93 Fed. 665;

[3] Bramwell *v.* Holcomb, 3 My. & Cr. 739; Bohn *v.* Bogue, 10 Jurist, 420; Story *v.* Holcombe, 4 McLean, 306; Fed. Cas. 13497, p. 173; Gray *v.* Russell, 1 Story 11; F. C. 5728, p. 1038.

[4] L. R. 3 App. Cas. 483, 498, And see, generally, on infringement:—Goldmark *v.* Kreling, 35 Fed. 661; Boucicault *v.* Wood. 2 Biss. 34, Fed. Cas. 1693; Shook *v.* Rankin, 6 Biss. 477, Fed. Cas. 12804; Schubreth *v.* Shaw, 19 Am. Law Reg. (N. S.) 248, Fed. Cas. 12482; Aronson *v* Baker, 43 N. J. Eq, 365, 12 At. 177.

[5] 26 Stat at Large, 1106.

[6] Sec. 4953.

piration of the first term; and further, within two months from the date of the renewal, a copy of the record must be published in one or more newspapers printed in the United States for a period of four weeks.[1]

No person is entitled to copyright unless he shall, on or before the day of publication in this or any foreign country, deliver at the office of the Librarian of Congress, or deposit in the mail within the United States, addressed to the Librarian of Congress, at Washington, District of Columbia, a printed copy of the title of the book, map, chart, dramatic or musical composition, engraving, cut, print, photograph or chromo, or a description of the painting, drawing, statue, statuary, or a model or design for a work of the fine arts for which he desires a copyright. It is further provided as the second step necessary to secure copyright that not later that the day of publication in this or any foreign country there must be delivered at the office of the Librarian of Congress at Washington, or deposited in the mail within the United States addressed to the Librarian of Congress two copies of such copyright book, map, chart, dramatic or musical composition, etc.[2]

This section specifies a "printed copy" of the title. The regulations of the librarian's office construe this literally, and while typewritten titles are not refused, they are accepted at the applicant's risk. Written titles are not accepted. It is usual, however, to cut the title page from a copy of the book, and forward it, or to send a third copy of the book itself. Sending two copies does not comply with the law, which requires two copies and the title. The copies must be made from type set up within the United States, or from plates made therefrom,[3] and must be complete copies of the best edition issued.[4] It was at one time the custom to forward two type written copies of dramatic compositions, but it is doubtful if this is a compliance with the statute and is not a safe course to follow; printed copies should be sent. The statute provides that a fee of fifty cents shall be charged for recording the title for citizens of the United States, and one dollar for a foreigner, and fifty cents for copies of the record. Fifty cents is also charged for certified receipts for copies deposited.

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[1] Sec. 4954.

[2] Sec. 4956.

[3] Sec. 4956. These requirements must be strictly complied with. Wheaton *v.* Peters, 8 Pet., 591; Ewer *v.* Cox, Fed. Cas. 4584; Jackson *v.* Walkie, 29 Fed., 15,

[4] Sec. 4959.

It is desirable that the title, application, the two copies and the fee be sent in one parcel, which should be directed to the Librarian of Congress, Washington, D. C. Upon request, postmasters are required to give a receipt for copyright matter deposited in the mail. A franking label may be used, and when used no postage is required, and there is no limit to the weight and size of the parcel. The Librarian of Congress furnishes forms for applicants free upon request, and their use greatly expedites business with the office. The department also publishes a very complete and useful pamphlet of directions for securing copyrights, which the Register of Copyrights furnishes to any one applying. No action can be maintained for infringement of copyright unless notice is given by inserting in the several copies of every edition published, on the title page, or the page immediately following, if it be a book: "Entered according to Act of Congress in the year ———, by ————, in the office of the Librarian of Congress at Washiugton," or a shorter form consisting of the word "Copyright," the year, and the name of the person by whom it was taken out, as follows: "Copyright 19—, by A. B."[1]

IX. REMEDIES—Section 4965[2] provides that any person who shall copy, print, publish, dramatize, or translate or import any copyright dramatic or musical composition, etc., either in whole or in part, or by varying the main design, with intent to evade the law, or, knowing the same to be so, print, publish, sell, or expose for sale any copy, shall forfeit the plates and every sheet, and one dollar for every sheet if the same be found in his possession. Section 4966[3] provides that any person publicly performing or representing any copyright dramatic or musical composition, without the consent of the proprietor, shall be liable in damages, not less than one hundred dollars for the first, and fifty dollars for every subsequent performance. If the unlawful performances be wilful and for profit, the offense is made a misdemeanor, and upon conviction the infringer may be imprisoned for a period not exceeding one year. Any injunction that may be granted, after notice restraining the performance of any dramatic or musical composition, by any

[1] 18 Stat. at Large, 78. This provision must be strictly followed. Thompson *v.* Hubbard, 131 U. S. 123. Thompkins *v* Rankin, Fed, Cas. 14, 090, though mere surplusage in the notice will not invalidate. Falk *v.* Schumacher, 48 Fed, 222; Hefel *v.* Land Co., 54 Fed, 179; and a trade name may be used. Werckmeister *v.* Springer Lith. Co., 63 Fed., 808.

[2] Act March 2, 1895, 28 Stat. at Large, 965.

[3] Act January 6, 1897, 29 Stat. at Large, 481. Brady *v.* Daly, 175 U. S. 148.

United States Court or Judge, may be served anywhere in the United States, and is operative and may be enforced by contempt proceedings by any other Circuit Court or Judge in the United States. A motion to dissolve may be made in any circuit where such dramatic or musical composition is being performed, upon such notice to the plaintiff, as the Judge before whom the motion is made, shall deem proper. This notice may be served upon the plaintiff in person, or upon his attorneys in the action. No action may be maintained for a penalty to forfeiture, unless begun within two years after the cause of action has arisen,[1] The ordinary action in equity for injunction to prevent violation of copyright may be maintained in the circuit courts, and district courts having the jurisdiction of circuit courts, by any party aggrieved,[2] and the Federal courts have exclusive jurisdiction of copyright suits, without regard to the citizenship of the parties or the amount in controversy.

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[1] Sec. 4968. [2] Sec. 4970.